

APPEAL NO. 031270
FILED JUNE 27, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was originally held on November 18, 2002. The hearing officer, in that case, determined, among other matters, that the claimant was entitled to supplemental income benefits (SIBs) for the first quarter. The carrier appealed and the Appeals Panel in Texas Workers' Compensation Commission Appeal No. 030285, decided March 11, 2003, reversed the hearing officer's decision on the SIBs issue, remanded the case for the hearing officer to make specific evidentiary findings regarding a narrative report from a doctor which specifically explains how the claimant's injury causes a total inability to work and whether or not there are other records which showed that the injured employee is able to return to work applying Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)). The hearing officer, in the present appeal, stated "specific evidentiary findings have been made as indicated without the need for another hearing or further appearances by the parties." The hearing officer identifies a medical report dated February 27, 2002, from Dr. J as being the narrative which specifically explains how the compensable injury causes a total inability to work, discusses the opinion of Dr. G a Texas Workers' Compensation Commission (Commission) independent medical examination (IME) doctor and concludes that despite the written opinion of Dr. G that the claimant was capable of performing sedentary work "the records presented do not show the claimant had an ability to work during the first quarter qualifying period." The hearing officer again determined that the claimant was entitled to SIBs for the first quarter.

The carrier again appeals contending that the hearing officer ignored the "clearly credible, independent evidence" from Dr. G. The claimant responds urging affirmance.

DECISION

Reversed and rendered.

The background facts are recited in Appeal No. 030285 and will not be repeated here. The claimant asserts a good faith effort to obtain employment commensurate with his ability to work by complying with Rule 130.102(d)(4). Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. The hearing officer identified Dr. J's February 27, 2002, report as being the narrative that specifically explains how the compensable injury causes a total inability to work (Claimant's Exhibit 1). While that may arguably be the case, it is on the basis of the other record that we reverse this case.

Dr. G was a Commission-appointed IME doctor. In a report dated April 19, 2002, midway during the first quarter qualifying period, Dr. G recited that he had examined the claimant again on April 17, 2002, and noted the claimant's complaints of back and right leg pain. Dr. G recites the results of his examination and concludes:

Based on his examination, I believe that this patient can do sedentary work that involves no overhead work and no lifting of greater than 20 pounds. I would also suggest that he perform tasks that require no prolonged standing. The question of him falling due to his back giving way, in my opinion, are seen only in workers' compensation related situations, lawsuit situations, or as factitious data. Clearly, there is no objective evidence to substantiate any muscle weakness that would cause this.

The hearing officer acknowledges this report, gives no indication why it is not credible, and makes a finding that "[d]espite the written opinion of [Dr. G] that Claimant was capable of performing sedentary work, the records presented do not show Claimant had an ability to work during the first quarter qualifying period." As we stated in Appeal No. 030285, *supra*, in cases where a total inability to work is asserted and there are other records which on their face appear to show an ability to work, the hearing officer is not at liberty to simply reject those records as not credible without explanation or support in the record. Texas Workers' Compensation Commission Appeal No. 002498, decided November 30, 2000. In this case, all the hearing officer does is recite "other records presented do not show claimant had an ability to work during the first quarter qualifying period" without any explanation why Dr. G's report is not a record which shows that the claimant is able to do sedentary work.

We reverse the hearing officer's decision that the claimant is entitled to SIBs for the first quarter and render a new decision that the claimant is not entitled to SIBs for the first quarter.

The true corporate name of the insurance carrier is **CONTINENTAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Chris Cowan
Appeals Judge

Robert W. Potts
Appeals Judge